

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JUAN ALONSO, ABELARDO ARIAS, JAIME LOPEZ, RON
MENIN, LUIS NARANJO, HECTOR OLVERA, PEDRO
ORTIZ, LEONDARDO PRIETO, ARKADY SHTEYNBERG,
VICTOR SOLIS, ALEJANDRO TORRES, LUIS XURUC,
and IVAN ZAPATA, on behalf of themselves and all others
similarly situated,

Plaintiffs,

08 Civ. 7813 (DAB)

-against-

UNCLE JACK'S STEAKHOUSE, INC., UNCLE JACK'S
OF BAYSIDE, INC., UNCLE JACK'S STEAKHOUSE
FRANCHISE, INC., UNCLE JACK'S STEAKHOUSE
MIDTOWN, INC., WILLIAM J. DEGEL, THOMAS
CARPENTER, AND DENNIS BOROSOWSKI,

Defendants.

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JOINT PRETRIAL STATEMENT

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Dated: July 3, 2012
New York, New York

Pursuant to the Rule 16 of the Federal Rules of Civil Procedure and the Court's individual rules, the parties, submit the following Joint Pretrial Statement.

1. Brief Non-Adversarial Statement of the Case

This is a wage and hour case. Plaintiffs are current and former employees of Defendants Uncle Jack's Steakhouse, Inc. ("Uncle Jack's 34th Street), Uncle Jack's Steakhouse Midtown, Inc. ("Uncle Jack's Midtown") and Uncle Jack's of Bayside, Inc. ("Uncle Jack's Bayside") (collectively "Uncle Jack's"). Plaintiffs worked as captains, waiters, bussers, runners, and bartenders for Defendants. Also Defendants are William J. Degel, owner of Uncle Jack's, Thomas Carpenter, Director of Operations for Uncle Jack's, and Dennis Borysowski, a former manager.

Plaintiffs bring claims under The Fair Labor Standard Act, 29 U.S.C. Sec. 201-219 and The New York Labor Law against Defendants for overtime pay, minimum wage, withheld tips, spread of hours pay, and uniform cleaning allowances. Plaintiffs seek a ruling that Defendants acted willfully in regard to their alleged FLSA violations. Plaintiffs who have claims under the FLSA seek liquidated damages in the amount of 100% of their withheld wages. All Plaintiffs seek liquidated damages for their New York Labor Law claims of either 25% or 100% depending upon the interpretation of the amendments to the New York Labor Law. Three plaintiffs also bring retaliation claims under those same statutes. The Court certified a class action with respect to Plaintiffs' state law claims on September 21, 2011.

Defendants deny that the Plaintiffs' claims have merit and state specifically that it did not fail to pay overtime, never improperly placed a non-servers in the tip pool, that it deducted from

tips an appropriate amount for credit card fees in accordance with Federal and State laws and that it did not violate New York minimum wage or uniform allowance laws. Uncle Jack's has asserted various defenses against all of plaintiff's claims.

2. Specific Factual Basis For Jurisdiction and Venue

This court has subject matter jurisdiction under 28 U.S.C. Sec. 1331 because Plaintiffs' claims arise under a federal statute, the FLSA. This court has supplemental jurisdiction under 28 U.S.C. § 1367 under Plaintiffs' state law claims because those claims arise from the same nucleus of operative facts. This court has personal jurisdiction over each defendant because each is a citizen of the State of New York.

Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(1). Under § 1391(b)(1) "[a] civil action wherein jurisdiction is not founded solely on diversity of citizenship may . . . be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State . . ." Under 28 U.S.C. § 1391(c), "[f]or purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district to which it is subject to personal jurisdiction at the time the action is commenced." Uncle Jack's Steakhouse, Inc. and Uncle Jack's Steakhouse Midtown, Inc. are both subject to personal jurisdiction in this district because their principal places of business are located in this district. Accordingly, they are considered residents of this district under § 1391(c). All defendants reside in the same state: New York. Accordingly, venue is proper in this judicial district under § 1391(b)(1). Alternatively, venue is proper under 28 U.S.C. § 1391(b)(2) which provides for

venue in “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.” Finally, all objections to venue have been waived.

3. Designation of Case as Jury or Non-Jury

This is a jury case.

4. Statement of Relief Sought

Plaintiffs seek: (a) unpaid overtime pay; (b) pay owed them due to Defendants' failure to pay minimum wage as a result of Defendants' loss of the tip credit due to unlawful taking of Plaintiffs' tips; (c) the return of unlawfully taken tips; (d) spread of hours pay in the amount of one hour at minimum wage for each day on which they worked more than ten hours or the spread of hours exceeded ten; and (e) uniform cleaning allowances; (f) a ruling that the FLSA violations were willful; (g) liquidated damages under the FLSA; (h) an injunction against further violations of the NY Labor Law and FLSA; and (i) an injunction against further retaliation against Plaintiffs by Uncle Jack's or Mr. Degel.

Plaintiffs seek to hold the three corporate Defendants jointly and severally liable on the grounds that they comprise a single employer and/or jointly employed some Plaintiffs.

Plaintiffs seek to hold the three individual defendants personally liable on the grounds that they are “employers” within the meaning of that term under the FLSA and NYLL.

Defendants seek a finding that:

- (a) No employee worked more than forty hours in a week and if one did, it was aberrational, not the product of a policy or procedure and not common to all members of the class;
- (b) That the 3% deducted from Credit Card charges was less than the Credit Card interchange fees, charge backs, lost charges, and gift cards sold by Defendants

that were purchased on Credit Cards, such that Defendants' costs exceeded that which was taken from the employees tips. In the alternative, the difference between the amount of the actually Credit Card charge fees and the 3% is so small as to be *de minimis*. Accordingly there was no waiver of the employer tip credit.

- (c) That managers were not employers and were properly included in the private tip pool for certain of the private parties because they acted as wait staff for those events. That no manager was ever in the non-private party tip pool.
- (d) Employees were not required to wear a "uniform" in that the clothing they were required to wear could have been worn outside of work. Further even if the clothing is found to be a "uniform" the costs of cleaning did not lower their wages such that they were paid less than the minimum wage; and
- (e) No employee is entitled to spread of hours pay, because no employee worked more than ten consecutive hours in one day.

5. Undisputed Facts

1. At all relevant times, Defendant Uncle Jack's Steakhouse, Inc. ("Uncle Jack's 34th Street") has been a New York corporation that owns and operates a restaurant at 440 Ninth Avenue, New York, New York.

2. At all relevant times, Defendant Uncle Jack's Steakhouse Midtown, Inc. ("Uncle Jack's Midtown") has been a corporation that owns and operates a restaurant at 44 West 56th Street, New York, New York.

3. At all relevant times, Defendant Uncle Jack's of Bayside, Inc. has been a New York corporation that owns and operates a restaurant at 39-40 Bell Boulevard in Bayside, New York ("Uncle Jack's Bayside"). *Id.*

4. Defendant William Degel was at all times relevant hereto Chief Executive Officer of Uncle Jack's 34th Street, Uncle Jack's Midtown, and Uncle Jack's Bayside.

5. Degel owns 100 percent of the stock of Uncle Jack's 34th Street and Uncle Jack's Bayside and 75 percent of the stock of Uncle Jack's Midtown.

6. Defendant Thomas Carpenter ("Carpenter") was Uncle Jack's Director of Operations and assisted Degel in running the three restaurants.

7. Plaintiff Juan Alonso is an individual who was employed by Uncle Jack's Steakhouse, Inc. as a busser at 440 Ninth Avenue, New York, New York from March 13, 2007 through September 5, 2008.

8. Plaintiff Abelardo Arias is an individual who Uncle Jack's Steakhouse, Inc. employed as a waiter at 440 Ninth Avenue, New York, New York from February 5, 2004 through September 5, 2008.

9. Plaintiff Jaime Lopez is an individual who Uncle Jack's Steakhouse, Inc., and Uncle Jack's Bayside employed as a waiter at 440 Ninth Avenue, New York, New York and 39-40 Bell Boulevard, Queens, New York from February 5, 2004 through September 5, 2008.

10. Plaintiff Ron Menin is an individual who Uncle Jack's Steakhouse, Inc. employed as a waiter at 440 Ninth Avenue, New York, New York from on or about March 1, 2004 until on or about March 31, 2007.

11. Plaintiff Luis Naranjo is an individual who Uncle Jack's Steakhouse, Inc. and Uncle Jack's Bayside employed as a waiter at 440 Ninth Avenue, New York, New York and 39-40 Bell Boulevard, Queens, New York from February 5, 2004 through September 5, 2008. Pl.

12. Plaintiff Hector Olvera is an individual who Uncle Jack's Steakhouse, Inc. employed as a waiter at 440 Ninth Avenue, New York, New York from 2004 through September 5, 2008.

13. Plaintiff Pedro Ortiz is an individual who Uncle Jack's Steakhouse, Inc., employed as a busser at 440 Ninth Avenue, New York, New York from on or about September 1, 2007 through September 5, 2008.

14. Plaintiff Leonardo Prieto is an individual who Uncle Jack's Steakhouse, Inc., and Uncle Jack's have employed as a waiter at 440 Ninth Avenue, New York, New York from March 8, 2006 through September 5, 2008.

15. Plaintiff Arkady Shteynberg is an individual who was employed by Uncle Jack's Steakhouse, Inc. as a waiter from on or about February 2006 until March 2006. Uncle Jack's Steakhouse, Inc. employed Shteynberg as a captain from March 2006 until on or about October 1, 2007. Uncle Jack's Midtown employed Shteynberg as a captain from on or about October 1, 2007 until on or about May 31, 2008.

16. Plaintiff Victor Solis is an individual who Uncle Jack's Steakhouse, Inc., employed as a busser at 440 Ninth Avenue, New York, New York from on or about November 1, 2007 through September 5, 2008.

17. Plaintiff Alejandro Torres is an individual who Uncle Jack's Steakhouse, Inc. employed as a waiter at 440 Ninth Avenue, New York, New York from on or about December 1, 2004 through September 5, 2008.

18. Plaintiff Luis Xuruc is an individual who Uncle Jack's Steakhouse, Inc. employed as a runner from February 11, 2006 through September 5, 2008.

19. Plaintiff Ivan Zapata is an individual who Uncle Jack's Steakhouse, Inc. employed as a waiter from on or about 2003 through September 5, 2008.

20. Each Opt-In Plaintiff and class member was, at some point in time, employed by Uncle Jack's 34th Street, Uncle Jack's Midtown, or Uncle Jack's Bayside.

21. At all relevant times Uncle Jack's Steakhouse, Inc., Uncle Jack's Bayside, and Uncle Jack's Midtown employed captains, waiters, bussers, runners, and bartenders who received tips as part of their compensation (hereinafter referred to as "Tipped Employees."

22. Uncle Jack's Steakhouse, Inc. Uncle Jack's Bayside, and Uncle Jack's Midtown each at all relevant times deducted three percent (3%) from Tipped Employees' credit card tips for the purported reason of offsetting credit card processing fees.

6. Plaintiffs' Assertions of Disputed Facts With Citations to the Evidentiary Record as required in Local Rule 56.1

a. Uncle Jack's' Taking of 3% of Credit Card Tips

1. All three Uncle Jack's restaurants operated on the basis of a "tip pool" in which all Tipped Employees (captains, waiters, bussers, runners, and bartenders) shared. Def. Exs. Overton Dep. 98-100; Pl. Exs. 53-54; Pl. Ex. 78, UJ Midtown Dep. 41 .

2. At each location, all tips were placed into a pool and divided among the Tipped Employees who worked at that location that night according to the number of points they were assigned. Corcoran Dep. 39-42.

3. Defendant Uncle Jack's Bayside cannot meet its burden of proving that it incurred 3% in credit card interchange fees (and was therefore entitled to take 3% of plaintiffs' credit card tips) because it has no records of what interchange fees, if any, it incurred. *See* Pretrial Statement, *passim*, which is devoid of any such records.

4. Defendant Uncle Jack's Midtown cannot meet its burden of proving that it incurred 3% in credit card interchange fees (and was therefore entitled to take 3% of plaintiffs' credit card tips) because it has no records of what interchange fees, if any, it incurred. *See* Pretrial Statement, *passim*, which is devoid of any such records.

5. Defendant Uncle Jack's 34th Street cannot meet its burden of proving that it incurred 3% in credit card interchange fees (and was therefore entitled to take 3% of plaintiffs' credit card tips) because: (a) it has no records of what interchange fees, if any, it incurred for the period of time between December 1, 2005 and August 31, 2006 (*See* Pretrial Statement, which is devoid of any such records); and (b) for those periods of time for which it produced records, those records show it incurred interchange fees of less than 3%. *See* Def.. Ex. "J." Defendants produced additional records on January 27, 2012 (some 17 months after the close of discovery and Plaintiffs oppose the admission of such records or their use at trial).

b. Uncle Jack's' 25% Large Party Surcharge Was A "Gratuity."

6. Uncle Jack's maintained a policy of charging a mandatory twenty-five percent gratuity for pre-booked or other large parties and required its patrons to execute a written contract verifying this surcharge. Pl. Exs. 55, 56, 121-23, 127

7. Uncle Jack's' 25% surcharge on large parties, under the law, was a gratuity, not a permitted administrative charge. The law imposes "a rebuttable presumption that any charge in addition to charges for food, beverage, lodging, and other specified materials or services, including but not limited to any charge for 'service' or 'food service,' is a charge purported to be a gratuity." N.Y. Comp. Codes R. & Regs. tit. 12, § 146-2.18(b). Furthermore, "[a] charge for the administration of a banquet, special function, or package deal shall be clearly identified as such and customers shall be notified that the charge is not a gratuity or tip," *id.*, § 146-2.19(a), and "[t]he employer has the burden of demonstrating, by clear and convincing evidence, that the notification was sufficient to ensure that a reasonable customer would understand that such charge was not purported to be a gratuity." *Id.* § 146-2.19(b)." Uncle Jack's cannot meet this burden because: (a) Uncle Jack's' large party contracts used only the phrase "service charge" to

describe the 25% charge; (Pl. Exs. 55, 56 and 58) (b) Uncle Jack's cannot produce the bills given to the customers when they paid for large parties, giving rise to an inference that the bills would support Plaintiffs' claims; and (c) those large party bills that still exist list the 25% charge as a "gratuity" (Pl. Exs 64-66); (d) Uncle Jack's did not impose sales tax on the 25% surcharge as required for administrative charges – further indicating it was a gratuity. (Pl. Exs. 55, 56 and 58); and (e) Uncle Jack's recorded the payments to managers of large party tips on a document called a "Tipout Log." (Pl. Ex. 54).

8. Uncle Jack's allowed managers to share in the large party tips. Pl. Ex. 53, 54, 133; Pl. Ex. 78, UJ Midtown Dep. 37:13-20, 39:6-8. Managers can never share in employees' tips, regardless of whether they perform service duties. *See* Plaintiff's Trial Brief. Regardless, Uncle Jack's managers did not perform service duties at large parties and frequently were not even present for parties for which they took part of the tips. *See* Overton Dep. 95; Plaintiffs' testimony, Part "9," Joint Pretrial Statement, including Arias, Black, Corcoran, Marrano, Naranjo, J. Ortiz, and Overton.

9. Uncle Jack's "party planners" also retained a portion of the gratuity. Pl. Ex. 53, 54, and 133. The duties of the "party planners" were to sit in an office in Uncle Jack's Bayside headquarters and solicit party business or to go into the field to solicit party business. Party planners had no role in providing any lunch or dinner service to Uncle Jack's patrons. Pl. Ex. 79, Carpenter Dep. 71:4-10.

c. Overtime Pay

10. Uncle Jack's never paid any overtime to any of its tipped employees until 2008 when it began paying a very small amount of overtime. Pl. Ex. 3-12 (year-end payroll reports indicating an absence of overtime pay).

11. Plaintiffs frequently worked more than 40 hours per week without receiving overtime premium pay. Pl. Ex. 46 and 47 (Uncle Jack's 34th Street timecards from May 14, 2007 until Sept. 5, 2008 indicating over 2,200 hours of unpaid overtime); Pl. Ex. 49 (evidence summary compiling those instances of unpaid overtime); Pl. Ex. 50 (exhibit summarizing the remarkable number of time Uncle Jack's happened to pay employees for precisely 40 hours of work but never for any overtime); See Testimony of Plaintiffs including Arias, Black, Corcoran, Monge, Shteynberg, Julian Ortiz, Naranjo, Part "9," Joint Pretrial Statement.

d. Spread of Hours Pay

12. Uncle Jack's never paid any spread of hours pay to its tipped employees. Pl. Ex. 3-12 (year-end payroll reports showing an absence of spread of hours pay); Pl. Ex. 78, UJ Midtown Dep. 24-25.

13. Plaintiffs frequently worked more than ten hours in a day or worked a split shift without receiving spread of hours pay. Pl. Exs. 47, 54, 59, 128.

e. Uniform Allowances

14. Uncle Jack's never paid any uniform allowances to its tipped employees. Pl. Exs. 18-45 (Uncle Jack's payroll documents entitled "Employee Gross-to-Net" that are devoid of any uniform allowance pay).

15. Uncle Jack's required Plaintiffs wear either tuxedos or uniforms that included a paisley vest of a specific distinctive type and style, color, and quality chosen by Uncle Jack's. Def. Exs. Marrano Dep., 63; Corcoran Dep. 36-37.

f. Single Employer Status of the Three Uncle Jack's Restaurants

16. The three Uncle Jack's restaurants comprise a "single employer" because: (1) they have interrelated operations (Undisputed. Facts ¶ 6); (2) common management (*Id.*); (3) centralized control of labor relations (*Id.*; Overton Testimony, Part "9," Joint Pretrial Statement); and (4) common ownership (Undisputed Facts ¶ 4).

17. Specifically, operations of all three restaurants were centrally controlled by Degel and Carpenter. Pl. Ex. 77, Degel Dep. 31, Pl. Ex. 78, UJ Midtown Dep. 5-10, Pl. Ex. 79, Carpenter Dep. 8-9

18. Carpenter was in charge of labor relations for all three restaurants. Pl. Ex. 77, Degel Dep. 31, Pl. Ex. 78, UJ Midtown Dep. 6-7, 42; Pl Ex. 79 Carpenter Dep., 8-9.

19. Degel and Carpenter were, during the relevant time periods, in charge of the management of all three restaurants. Pl. Ex. 77, Degel Dep. 31.

20. Degel owned 100% of Uncle Jack's Bayside and Uncle Jack's 34th Street and 75% of Uncle Jack's Midtown.

g. Employer Status of Individual Defendants

21. Defendant Thomas Carpenter ("Carpenter") is Uncle Jack's Director of Operations and assists Degel in running the three restaurants. Pl. Ex. 77, Degel Dep. 30-31.

22. Carpenter is involved in all aspects of Uncle Jack's business, including personnel decisions, employee compensation, marketing, payroll, and the creation of Uncle Jack's

handbooks consisting of uniform policies and procedures applicable to all Plaintiffs. Pl. Ex. 77, Degel Dep. 30:21-31:18; Pl. Ex. 78, UJ Midtown Dep. 6-8, Pl. Ex. 79, Carpenter Dep. 8.

23. Defendant Dennis Borysowski (“Borysowski”) served as Uncle Jack’s General Manager and his duties included, among other things, running Uncle Jack’s payroll at the restaurants where he was employed. Pl. Ex. 77, Degel Dep. 32, Pl. Ex. 78, UJ Midtown Dep. 16-17; Pl. Ex. 79, Carpenter Dep. 13-14.

h. Uncle Jack’s Failed To Pay a Cash Wage to Five Plaintiffs

24. Abelardo Arias’ employment with Uncle Jack’s began on February 5, 2004. Undisputed Facts ¶ 8, *supra.* Uncle Jack’s paid no cash wage to Abelardo Arias prior to June 23, 2008. Pl. Ex. 79, Carpenter Dep. 28-38, 44-45, Dep. Exs. 4-10.

25. Luis Xuruc’s employment with Uncle Jack’s began on February 11, 2006. Undisputed Facts ¶ 18, *supra.* Uncle Jack’s paid no cash wage to Luis Xuruc prior to June 23, 2008. Pl. Ex. 79, Carpenter Dep. 28-38, 44-45, Dep. Exs. 4-10, Ex. 12.

26. Leonardo Prieto’s employment with Uncle Jack’s began on March 8, 2006. Undisputed Facts ¶ 14. Uncle Jack’s paid no cash wage to Leonardo Prieto prior to June 24, 2008. P. Ex. 79, Carpenter Dep. 44-45, Dep. Ex. 12.

27. Julian Ortiz’s employment with Uncle Jack’s began in 2002. Julian Ortiz Testimony, Part “9,” Joint Pretrial Statement. Uncle Jack’s paid no cash wage to Julian Ortiz until January 2008. Pl. Ex. 105.

28. Lukasz Kuchta’s employment with Uncle Jack’s began on September 1, 2005. Pl. Ex. 59. Uncle Jack’s paid no cash wage to Lukasz Kuchta until January 2008. Pl. Ex. 59, 60.

i. Retaliation

29. Defendants Uncle Jack's Steakhouse, Inc. and William Degel retaliated against Plaintiffs Arias, Prieto and Zapata. *See* Testimony of Arias, Prieto, and Zapata, Part "9," Joint Pretrial Statement.

30. After the filing of this Complaint, Defendants, in retaliation for Plaintiffs' filing of this Complaint, demanded that Plaintiff Leonardo Prieto produce evidence of his immigration status. Pl. Ex. "1", Am. Comp. ¶ 88; Testimony of Prieto, Part "9," Joint Pretrial Statement.

31. On or about September 25, 2008, Defendant William Degel, the owner of Uncle Jack's, telephoned Plaintiff Abelardo Arias. In a belligerent tone, Degel confronted Arias about the lawsuit. Testimony of Arias, Part "9," Joint Pretrial Statement.

32. Degel asked Arias why he was still working for Uncle Jack's after suing the restaurant. Degel further said to Arias, "If you're not happy here you should quit." Pl. Ex. "1," Am. Comp. ¶ 91, Arias Testimony, Part "9," Joint Pretrial Statement.

33. Degel made a similar telephone call Ivan Zapata. Pl. Ex. "1," Am. Comp. ¶ 92, Zapata Testimony, Part "9," Joint Pretrial Statement.

7. Defendants' Assertions of disputed facts with citations to the evidentiary records as required in Local Rule 56.1

- a. Employees of Uncle Jack's Restaurants earned far in excess of the minimum wage. Deposition of Jeffrey Greenberg p. 70; Deposition of Robert Morano p. 23; deposition of Victor Rivera pp. 39-40; Affidavit of Paul Leventhal Aff., ¶ 2; Affidavit of Jorge Prieto ¶ 2; Affidavit of Jeffrey Kleinman ¶ 2; Affidavit of Rufino De La Cruz ¶ 2; Affidavit of Angel Sinchi ¶ 2; Affidavit of Tom 'O'Connor ¶ 2; Affidavit of Julio Ganzhi ¶ 2; Affidavit of David Gadlin ¶ 3;

Affidavit of Marco Tucuri ¶ 2; Affidavit of Robert Higgins ¶ 2; Robert Bastedo ¶ 2; Affidavit of Kevin Sullivan Aff ¶ 2; Geoveny Vgalle ¶ 2.

- b. The clothing that employees' were required to wear are of the type which could be worn outside of work. Affidavit of Paul Leventhal Aff., ¶ 5; Affidavit of Jorge Prieto ¶ 5; Affidavit of Jeffrey Kleinman ¶ 5; Affidavit of Rufino De La Cruz ¶ 5; Affidavit of Angel Sinchi ¶ 5; Affidavit of Tom 'O'Connor ¶ 5; Affidavit of Julio Ganzhi ¶ 5; Affidavit of David Gadlin ¶ 6; Affidavit of Marco Tucuri ¶ 5; Affidavit of Robert Higgins ¶ 5; Robert Bastedo ¶ 5; Affidavit of Kevin Sullivan Aff ¶ 5; Geoveny Vgalle ¶ 5, Deposition of Abelardo Arias pp. 93-95; Deposition of Victor Rivera pp. 65-66. Plaintiffs and Opt-ins often clocked in early, clocked out late, or forgot to clock-out at all, resulting in the timekeeping program containing errors that had to be corrected by management. Deposition of Thomas Carpenter pp. 134-38; Deposition of William Degel, pp. 78-91; Deposition of Robert Morano, pp. 24-37; Deposition of Michael Overton pp. 119-133; Deposition of Abelardo Arias pp. 67-71.
- c. Uncle Jack's restaurants had policies which stated that employees were not to work more than forty hours. Deposition of William Degel pp. 104-05; Deposition of Robert Morano p. 23; Deposition of Jeffrey Greenberg pp. 53-54; Affidavit of Paul Leventhal Aff., ¶ 3; Affidavit of Jorge Prieto ¶ 3; Affidavit of Jeffrey Kleinman ¶ 3; Affidavit of Rufino De La Cruz ¶ 3; Affidavit of Angel Sinchi ¶ 3; Affidavit of Tom 'O'Connor ¶ 3; Affidavit of Julio Ganzhi ¶ 3; Affidavit of David Gadlin ¶ 4; Affidavit of Marco Tucuri ¶ 3; Affidavit of Robert Higgins ¶ 3; Robert Bastedo ¶ 3; Affidavit of Kevin Sullivan Aff ¶ 3; Geoveny Vgalle ¶ 3.

- d. Uncle Jack's restaurants had policies which required that parties which signed a contract for service would pay a 20% or 25% service charge. The service charge would be distributed to the the managers, captains, waiters, bussers, bartenders and on occasion a party planner who helped book and carry out the party to the customers' ' satisfaction. Dennis Borosowski Deposition, p. 110.
- e. In addition to the three percent credit card charge there were charge backs for unpaid bills, special card charges and gift cards which raised the amount that the restaurants paid for operating the credit card processing above three percent. William Degel Deposition pp. 83-84; Ex. F, letter from Psyllos and Psyllos.
- f. Mr. Degel reasonably believed that no employees worked more than forty hours in a week as was Uncle Jack's restaurants' policies. William Degel Deposition 104-05.

8. Brief listing of issues of law to be decided by the Court, tracking issues of law fully developed in separate memorandum of law submitted in accordance with the scheduling order.

1) What are the parties' respective burdens on the issue of whether Defendants' deduction of 3% from Plaintiffs' credit card tips was lawful or unlawful?

a) Is there a "di minimis" exception to the rule that restaurants must ensure their employees receive all of their tips in order to qualify for a "tip credit" regarding monies taken from tips to cover credit card charges?"

b) If Defendants took any portion of Plaintiffs' tips, what remedies are Plaintiffs entitled to receive?

2) What are the parties' respect burdens with respect to whether Defendants' taking of a portion of the 25% surcharge it imposed on large parties was lawful or unlawful?

- 3) May Managers can participate in a tip pool if they: (a) they perform service duties; or (b) do not meet the definition of an “employer” under the FLSA?
- 4) Under what circumstances, if any, may “party planners” participate in a tip pool?
- 5) What records were Defendants required to keep and what is the legal effect if Defendants failed to keep certain records required by the NYLL or FLSA?
- 6) Under what circumstances are tipped employees entitled to spread of hours pay?
- 7) Under what circumstances are tipped employees entitled to uniform allowances?
 - a) Are tuxedos were “uniforms” for which Uncle Jack’s was obligated to pay cleaning allowances?
 - b) Are paisley vests and other work clothing “uniforms” for which Uncle Jack’s was obligated to pay cleaning allowances?
- 8) If an employee received only tips as compensation, what remedy is the employee entitled to receive?
- 9) What legal standard applies to the issue of whether the three Uncle Jack’s restaurants comprise a “single employer?”
- 10) What legal standard applies to the issue of whether the three individual defendants are “employers” for purposes of the FLSA and New York Labor Law?
- 11) What legal standard applies to the issue of whether Defendants’ conduct is “willful” for purposes of the FLSA and NYLL?
- 12) What legal standard applies to the issue of whether Defendants are liable for liquidated damages under the FLSA?
- 13) Do the NYLL amendments imposing 100% liquidated damages under the NYLL apply retroactively?
- 14) How is overtime pay calculated in the event the jury determines that the 25% charge added for large parties is a “compulsory charge for service” and not a “tip?”

15) Defendants are liable for retaliation if their conduct towards plaintiffs if a reasonable employee would have found defendants' actions materially adverse.

9. Alphabetical list of witnesses to be called at trial for each Party and a brief summary of the testimony of each witness (one paragraph at most) if two or more witnesses will testify to the same facts, state why their testimony will not be cumulative.

A. Plaintiffs' Witnesses

- 1. Abelardo Arias** (Plaintiff – 34th St.) will testify about Defendants' failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, unlawful taking of tips and retaliation. He will testify to Defendants' failure to pay him anything other than tips until June 2008. He will also testify to management roles played by individual Defendants and retaliation after the filing of the complaint.
- 2. William Black** (Plaintiff -34th St. and Bayside) will testify about Defendants' failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, and unlawful taking of tips. He will also testify to management roles played by individual Defendants. The testimony of Black and the other witnesses listed below is not cumulative because the testimony is intended to be representative of a larger group of employees.
- 3. Jeremy Cohen** (Plaintiff – 34th St.) will testify about Defendants' failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, unlawful taking of tips and retaliation.
- 4. William Corcoran** (Plaintiff – 34th St.) will testify about Defendants' failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, and unlawful taking of tips. He will also testify to management roles played by individual Defendants.
- 5. Jonathan Harris** (Plaintiff – 34th St.) Same as above.
- 6. Jeffrey Greenberg** (Plaintiff- 34th St. and Midtown) Same as above.
- 7. Lukasz Kuchta** (Plaintiff – 34th St. and Midtown) Same as above as well as Defendants' failure to pay him anything other than tips for several years of his employment.
- 8. Seth Lewandowski** (Plaintiff – 56th St. and Midtown) will testify about Defendants' failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, and unlawful taking of tips. He will also testify to management roles played by individual defendants.

9. **Christian Lohse** (Plaintiff – 56th St.) Same as above.
10. **Jaime Lopez** (Plaintiff – 34th St.) Same as above.
11. **Ira Mandel** (Former manager – 34th St.) Authentication/explanation of tip-out logs (if necessary). *See* Plaintiffs’ Ex. “53.”
12. **Robert Marrano** (Plaintiff – 34th St.) Defendants’ unlawful taking of tips.
13. **Ron Menin** will testify about Defendants’ failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, and unlawful taking of tips. He will also testify to management roles played by individual defendants.
14. **Filiberto Monge** will testify about Defendants’ failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, and unlawful taking of tips. He will also testify to management roles played by individual defendants.
15. **Kim Myers** (Paralegal, Fugazy & Rooney LLP) will testify to the creation of evidence summaries.
16. **Luis Naranjo** (Plaintiff – 34th St. and Bayside) will testify about Defendants’ failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, and unlawful taking of tips. He will also testify to management roles played by individual Defendants.
17. **Oscar Ochoa** (Plaintiff – Bayside) will testify about Defendants’ failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, and unlawful taking of tips. He will also testify to management roles played by individual defendants.
18. **Julian Ortiz** (Plaintiff – Bayside, 34th St. and 56th St.) will testify about Defendants’ failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, and unlawful taking of tips. He will also testify to management roles played by individual defendants. He will also testify to Defendants’ failure to pay him anything other than tips for almost all of his employment.
19. **Pedro Ortiz** (Plaintiff – 34th St.) will testify about Defendants’ failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, and unlawful taking of tips. He will also testify to management roles played by individual defendants.
20. **Michael Overton** (Plaintiff – 34th St.) Same as above.

- 21. Hector Perez** (Plaintiff – 34th St.) Same as above.
- 22. Leonardo Prieto** (Plaintiff – 34th St.) Same as above. Additionally he will testify to Defendants’ failure to pay him anything other than tips for most of his employment and to retaliatory demands that he prove his immigration status after this complaint was filed.
- 23. Victor Rivera** (Plaintiff – 34th St.) will testify about Defendants’ failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, and unlawful taking of tips. He will also testify to management roles played by individual defendants.
- 24. Aaron Shteynberg** (Plaintiff – 34th St. and Midtown) will testify about Defendants’ failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, and unlawful taking of tips. He will also testify to management roles played by individual defendants.
- 25. Allison Vieyra** (Paralegal – Fugazy & Rooney LLP) will testify to the creation of evidence summaries.
- 26. Luis Xuruc** (Plaintiff – 34th St.) will testify about Defendants’ failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, and unlawful taking of tips. He will also testify to management roles played by individual Defendants. Additionally, he will testify to Defendants’ failure to pay him anything other than tips for most of his employment.
- 27. Ivan Zapata** (Plaintiff -34th St.) will testify about Defendants’ failure to pay overtime, minimum wage, spread of hours pay or uniform allowances, and unlawful taking of tips. He will also testify to management roles played by individual Defendants.

B. Defendants’ Witness List

1. **Gerald Ambrose** (Bar Manager – Bayside) will testify about the duties of a bartender at the Bayside location. The hours and schedule, the tip pool, clothing/uniform costs in relation to minimum wage and credit cards fees.
2. **Robert Bastedo** (Bartender – 34th St.) - He will testify about the duties of a bartender at 34th street, the hours and schedule, the tip pool, clothing/uniform costs in relation to minimum wage and credit cards fees.
3. **Dennis Boryowski** (Defendant & Former Manager) Mr. Boroyowski is a defendant and a former restaurant manager for Uncle Jacks. He will testify about Uncle Jack’s policy of not permitting employees to work more than 40 hours in a week and about managers working as servers at various private parties. He will testify about the need

to correct the weekly time records to accurately reflect the true hours worked by the employees.

4. **Jofre Bravo** (Waiter – 56th St.) is a waiter at the 56th Street location. He will testify about the duties of a waiter at the 56th Street location. The hours and schedule, the tip pool, clothing/uniform costs in relation to minimum wage and credit cards fees.
5. **Thomas Carpenter** (Defendant & Manager) Mr. Carpenter is a defendant and the former office manager for Uncle Jacks. He will testify about the implementation and enforcement of the no employee being permitted to work more than 40 hours in a week. He will testify about the various time keeping programs in use at the various locations.
6. **Adrian Cristescu** (Waiter – 34th St.) is a waiter at the 34th Street location. He will testify about the duties of a waiter at the 34th Street location. The hours and schedule, the tip pool, clothing/uniform costs in relation to minimum wage and credit cards fees.
7. **William Degel** (Defendant & Owner) Mr. Degel will testify about his background and start in the business and the expansion of the Uncle Jack's name over time. Mr. Degel will testify that he has never taken money from the tip pool, that he asked managers to implement a policy that no one was permitted to work more than 40 hours in a week, that he has permitted restaurant managers to be included in the tip pool only when dealing with private parties, as they work in the capacity of wait staff and that he takes 3% of each credit card charge to cover the Credit Card fees, charge backs and miscellaneous costs that are passed on from the various credit card agencies to UJ and sometimes not passed on to the staff.
8. **Tracy Friedman** (Captain – Bayside) is a Captain at the Bayside location. He will testify about the duties of a Captain at Bayside, work hours and schedule, the tip pool, clothing/uniform costs in relation to minimum wage and credit cards fees.
9. **David Gadlin** (Captain – 34th / Manager at Bayside) – He will testify about Uncle Jack's tip pool, private party policies as a Captain at 34th Street and as a Manager at Bayside.
10. **Arthur Giron** (Manager – 56th St.) - He will testify about Uncle Jack's policy of not permitting employees to work more than 40 hours in a week and about managers working as servers at various private parties. He will testify about the need to correct the weekly time records to accurately reflect the true hours worked by the employees.
11. **Alex Hernandez** (Waiter – Bayside) - is a waiter at the 56th Street location. He will testify about the duties of a waiter at the 56th Street location. The hours and schedule, the tip pool, clothing/uniform costs in relation to minimum wage and credit cards fees.

12. **Giovanni Martinez** (Busser – Bayside) – He will testify about the duties of a busser at the Bayside location, the work hours and schedule, the tip pool, clothing/uniform costs in relation to minimum wage and credit cards fees.
 13. **Wilson Molina** (Captain – 56th St.) is a Captain at the 56th Street location. He will testify about the duties of a Captain at 56th street, work hours and schedule, the tip pool, clothing/uniform costs in relation to minimum wage and credit cards fees.
 14. **Michael Moran** (Manager – Bayside and 56th St.) He will testify about Uncle Jack’s policy of not permitting employees to work more than 40 hours in a week and about managers working as servers at various private parties. He will testify about the need to correct the weekly time records to accurately reflect the true hours worked by the employees.
 15. **Jorge Prieto** (Runner – 56 St.) is a waiter at the 56th street location. He will testify about the duties of a waiter at the 56th Street location. The hours and schedule, the tip pool, clothing/uniform costs in relation to minimum wage and credit cards fees.
 16. **John Reed** (Bartender – Bayside) He will testify about the duties of a bartender at the Bayside location. The hours and schedule, the tip pool, clothing/uniform costs in relation to minimum wage and credit cards fees.
 17. **Muhammed Yaseen** (Manager- 34th St.) He will testify about Uncle Jack’s policy of not permitting employees to work more than 40 hours in a week and about managers working as servers at various private parties. He will testify about the need to correct the weekly time records to accurately reflect the true hours worked by the employees.
- 10. List of each Party’s exhibits to be offered at trial, including the other Party’s objections, if any, and the specific factual as well as legal basis for objections as to admissibility, listed on the same page in an adjacent column. The proponent should address briefly and specifically the objection raised.**

a. Plaintiffs’ Witness List

No.	Description	Bates Nos. if applicable)	Objection	Plaintiffs’ Response to
1	Amended Complaint			
2	Answer to Amended Complaint			
3	UJ 34 th Street Employee Gross to Net Report 9/30/2008	UJ 1233-1234		
4	UJ 34 th Street Employee Gross to Net Year-End Report 2007	UJ 3570		
5	UJ 34 th Street Employee Gross to Net Year-End Report 2006	UJ 3158		

6	UJ 34 th Street Employee Gross to Net Year-End Report 2005	UJ 5469		
7	UJ Bayside Employee Gross to Net Report 9/30/2008	UJ 3635-36		
8	UJ Bayside Employee Gross to Net Year-End Report 2007	UJ 2164		
9	UJ Bayside Employee Gross to Net Year-End Report 2006	UJ 4212		
10	UJ Bayside Employee Gross to Net Year-End Report 2005	UJ 5688		
11	UJ 56 th Street Employee Gross to Net Report 9/30/2008	UJ 0957-0958		
12	UJ 56 th Street Employee Gross to Net Year End Report 2007	UJ 0845		
13	UJ 34 th Street Payroll Registers	UJ 1133-34, 1465-68, 3261-63, 3378, 3422-23, 1580-82, 3831-33, 4328-33, 3441-3442, 4456-48, 2850-52, 4673, 4676, 4807-4809		
14	UJ 56th Street Payroll Registers	UJ 0770-72, 4222-4224, 2175-76, 0870-0872		
15	UJ Bayside Payroll Registers	UJ 4053-4054, 4121-22, 0625-26, 3767-69, 3576-77		
16	Defendants' Response to Admission Request			
17	Defendants' Amended Response to Plaintiff's Third Request for Admission			
18	UJ 34 th Street Employee Gross to Net 10/1/05 – 12/31/05	UJ 5578 – 5650		
19	UJ 34 th Street Employee Gross to Net 1/1/06 – 3/31/06	UJ 4813-4902		
20	UJ 34 th Street Employee Gross to Net 4/1/2006 – 6/30/06	UJ 2719-2810		
21	UJ 34 th Street Employee Gross to Net 7/1/06 – 9/30/06	UJ 2853-2920		

22	UJ 34 th Street Employee Gross to Net 10/1/06 – 12/31/06	UJ 3077-3155		
23	UJ 34 th Street Employee Gross to Net 1/1/2007 – 3/31/2007	UJ 2279 – 2371		
24	UJ 34 th Street Employee Gross to Net 4/1/2007 – 6/30/07	UJ 3835 - 3916		
25	UJ 34 th Street Employee Gross to Net 7/1/07 – 9/30/07	UJ 1583 -1663		
26	UJ 34 th Street Employee Gross to Net 10/1/07 -12/31/07	UJ 3459 - 3568		
27	UJ 34 th Street Employee Gross to Net 1/1/08 – 3/31/08	UJ 3264-3357		
28	UJ 34 th Street Employee Gross to Net 4/1/08 – 6/30/08	UJ 1953-2063		
29	UJ 34 th Street Employee Gross to Net 7/1/08 – 9/30/08	UJ 1138-1232		
30	Evidence Summary: Annual Tips according to Uncle Jack's payroll records			
31	UJ Bayside Employee Gross to Net 10/01/05 – 12/31/05	UJ 5651-5688		
32	UJ Bayside Employee Gross to Net 4/1/06 – 6/30/06	UJ 4055 – 4103		
33	UJ Bayside Employee Gross to Net 7/1/06 – 9/30/06	UJ 4123 – 4160		
34	UJ Bayside Employee Gross to Net 10/1/06 – 12/31/06	UJ 4175 – 4211		
35	UJ Bayside Employee Gross to Net 1/1/07 – 3/31/07	UJ 0628-665		
36	UJ Bayside Employee Gross to Net 4/1/07 – 6/30/07	UJ 0718-0750; 2064-66		
37	UJ Bayside Employee Gross to Net 7/1/07 – 9/30/07	UJ 2077- 2112		
38	UJ Bayside Employee Gross to Net 10/1/07 – 12/31/07	UJ 2123 -2163		
39	UJ Bayside Employee Gross to Net 1/1/08 – 3/31/08	UJ 3996 - 4037		
40	UJ Bayside Employee Gross to Net 4/1/08 – 6/30/08	UJ 3770 – 3815		
41	UJ Bayside Employee Gross to Net 7/1/08 – 9/30/08	UJ 3579 – 3615		
42	UJ Midtown (56 th Street) Employee Gross to Net 10/1/2007 – 12/31/2007	UJ 0773 – 0884		

43	UJ Midtown (56 th Street) Employee Gross to Net 1/1/08- 3/31/08	UJ 4225 – 4299		
44	UJ Midtown (56 th Street) Employee Gross to Net 4/1/08- 6/30/08	UJ 2179 -2251		
45	UJ Midtown (56 th Street) Employee Gross to Net 7/1/08- 9/30/08	UJ 0873 -0947		
46	Weekly Timecards, Uncle Jack's 34 th Street from May 27, 2007 – September 28, 2008	UJ 5689-5949		
47	Daily Timecards Uncle Jack's 34 th Street from May 27, 2007 – September 28, 2008	UJ 5960-6720		
48	Uncle Jack's Bayside Daily Timecards for Dec. 14, 2006 – July 29, 2007	UJ 7271		
49	Evidence Summary – OT Hours on Uncle Jack's Timecards 5/21/07-9/5/08 – 34 th Street			
50	Evidence Summary: Number of times employees paid for precisely 40 hours according to Uncle Jack's Payroll Records			
51	Evidence Summary: Amount of Large Party Tips Given To Managers According to Tipout Logs -34 th Street			
52	Evidence Summary: amount of regular hours worked by all tipped employees according to Uncle Jack's payroll records			
53	Mandel Affirmation Certifying Authenticity of Tip Logs		Hearsay Document	Admissible under FRE 902(11)
54	TIPOUT LOGS	P2119 - 3274		
55	UJ 34 th Street Large Party Contracts	UJ 5386-5459		
56	Bayside Large Party Sales	UJ 06823- 06825		
57	Rivera Hours Slips	P 1910, 2083, 2084		
58	Uncle Jack's Large Party	UJ07115-07235		

	Contracts - Midtown			
59	Kuchta Hours Records	P 2096-2118		
60	Arias Timecards	P 860, attached to Reply Aff. opposing motion to dismiss		
61	Arias Paystubs	P 806-859, 861, 863, 869-964, 966, 968		
62	Monge Timecards	Attached to Aff. opposing motion to dismiss		
63	Corcoran Check Stubs	P 1010-1025, 1032, 1036, 1038-39, 1042-43, 1045, 1048, 1052, 1054-55		
64	Large Party Bill	P1067		
65	Large Party Bill	P1092		
66	Large Party Bill	P 1096		
67	Lopez Check Stubs	P 1115-1121, 1124, 1126, 1128, 1130. 1132-33, 1137-39, 1141-46, 1148-49, 1151-53, 1155, 1158-59, 1163-64, 1168-1172, 1174-1176, 1178-79, 1181-82, 1186, 1190, 1192, 1194-96, 1198, 1203, 1206, 1208, 1213, 1217-19, 1224,		
68	Zapata Check Stubs	1299, 1303, 1313, 1315-16, 1320, 1327, 1336,37		
69	Party Gratuity Breakdown Sheets	P 1542, 1543, 1544		

70	Xuruc W-2 and Check Stubs	P 1580-1626		
71	Cohen Payroll records	P 201-279		
72	Harris, John Payroll Records	P 280-300		
73	L Kuchta Payroll Records	P 349-381		
74	Monge Payroll Records	P 401-494; 764-773		
75	Lewandowski Payroll Records	P 722-753		
76	Lohse Payroll Documents	1678-1822		
77	Deposition of William J. Degel			
78	Deposition of Uncle Jack's Midtown			
79	Deposition of Thomas Carpenter			
80	Alonso, Juan Pay Records	UJ2278, 3834, 1819, 2543-44, 1694-95, 1139, 3264-65, 1469, 1953, 1138		
81	Arias, Abelardo Pay Records	UJ1698, 1143		
82	Black, William Pay Records	UJ5659-60, 5580-81, 4818- 19, 2723-25, 2857-58, 3084- 85, 2287, 4607- 08, 4131-32, 4182-83		
83	Cavero, Luis Pay Records	UJ5584-85, 4825-26, 2731- 32, 2865-66, 3090-91, 2293- 94		
84	Celaj, Mersid Pay Records	UJ4188-89, 0690-91, 0727, 2085-86, 2133- 34, 4007-08, 3783-84, 3595- 96		
85	Cohen, Jeremy Pay Records	UJ4830-31, 2738		
86	Corcoran, Bill Pay Records	UJ5588-89, 4832-33, 2739- 41, 2868-69, 3093-94, 2295- 96, 1831-32, 1601-02, 2564-		

		65, 3282-83, 1485-86, 1159-60		
87	Greenberg, Jeffrey Pay Records	UJ2569, 3474, 3295-96, 1496, 1981, 1168-69		
88	Harris, John Pay Records	UJ3472-73, 3297-98, 1982-83, 1170-71		
89	Holmes, Rizo Pay Records	UJ3105-06, 3861-62		
90	Kuchta, Lukas Pay Records	UJ0809, 4263-64, 2215-16, 0912-13		
91	Layton, Jonathan Pay Records	UJ2771, 2893 94, 3112-13, 2316-17, 1850, 3866		
92	Leal, Jesus Pay Records	UJ2584-85		
93	Lewandowski, Seth Pay Records	UJ2896, 3114-15, 2318, 2217-18, 0916-17		
94	Lopez, Jaime Pay Records	UJ5612-13, 4864 65, 2773-75, 2897-98, 3116-17, 2321-22, 1853-54, 1623-24, 2586-87, 3307-08, 1509-10, 1178-79		
95	Lynch, John Pay Records	UJ4200-01, 0702-03, 0737-38, 2095-96, 2147-48, 4021-22		
96	Marrano, Robert Pay Records	UJ3118-19, 3877, 1860, 1629, 3705, 2594-95, 1402-03, 1515-15, 1185, 1200		
97	McClellan, John Pay Records	UJ2596-97,		

		3315-16, 2001-02, 1198-99		
98	Medina, Eustequio Pay Records	UJ3706, 1632, 2598		
99	Menin, Ron Pay Records	UJ5614-15, 4866-67, 2780-81, 2901-02, 3120-21, 2328-29		
100	Mesharafa, Riad Pay Records	UJ5616-17, 4868-69, 2782-83, 2903-04, 3122-23, 2330-31, 1862, 1633		
101	Monge, Filiberto Pay Records	UJ5618-19, 4870-71, 2784-86, 2907-08, 3126-27, 2335-36, 3884, 1867, 1638-39, 2604-05, 1410-1411, 1521-22, 1196-97		
102	Naranjo, Luis Pay Records	UJ5621-22, 4874-76, 2789-90, 2909-10, 3128-29, 2337-38, 3886, 1869, 3715, 1641, 2609-10, 3326, 1416, 1523, 2007, 1191-93		
103	Ochoa, Oscar Pay Records	UJ5680-81, 4089-91, 4152-53, 4204-05, 0707-08, 0743-44, 2101-02, 2153-54, 4026-27, 3800		
104	Odavic, L. Pay Records	UJ0819-20, 4274-75		
105	Ortiz, Julian Pay Records	UJ4276-77, 2225-26, 0926-27		
106	Ortiz, Pedro Pay Records	UJ2616, 3322-		

		23, 1528-29, 1186		
107	Overton, Michael Pay Records	UJ5625-26, 4879-80, 2791- 92, 2911-12, 2344-45, 3893- 94, 3720-21, 2617, 3554, 2014-15, 1203- 04		
108	Perez, Hector Pay Records	UJ4881-82, 2794-96, 2913- 14, 3136-37, 2623, 2352-53, 3900, 1883, 1652-53, 1423- 24, 1532, 2017, 1766-67		
109	Prieto, Leonardo Pay Records	UJ2019, 1207- 08		
110	Rivera, Vic Pay Records	UJ2802-03, 2915-16, 3140- 41, 2356-57, 3902, 1885, 1654-55, 3543, 2630, 1425-26, 1537, 2020, 1211-12		
111	Scotti, Charles	UJ4292, 2243, 0948-49		
112	Shteynberg, Aaron Pay Records	UJ4891-92, 2807-09, 2920- 21, 3146-47, 2360-61, 3906, 1889, 1657-58, 2634, 0835-36, 2245-46		
113	Sideris, Peter Pay Records	UJ5636-37, 4893-94, 2810- 12, 2922-23, 3148-49, 2362- 63, 3908, 1891, 1659		
114	Solis, Victor Pay Records	UJ2635-36,		

		1544-45, 1805-06		
115	Torres, Alejandro Pay Records	UJ5641-42, 4897-98, 2814-16, 2925, 3150-51, 2365-66, 1893-94, 1660-61, 3561, 2640, 1435-36, 1548-49, 1801-02		
116	Xuruc, Luis Pay Records	UJ2036, 1229-1230		
117	Zapata, Ivan Pay Records	UJ5645-46, 4900-01, 2819-21, 2930-31, 3156-57, 2372-73, 1897-98, 1664-65, 2647-48, 1439-40, 1553-54, 1231-32		
118	Evidence Summary: Number of weeks each Plaintiff was employed - Uncle Jack's 34 th Street			
119	Evidence Summary: Number of weeks each Plaintiff was employed - Uncle Jack's Bayside			
120	Evidence Summary: Number of weeks each Plaintiff was employed – Uncle Jack's Midtown			
121	Evidence Summary: Uncle Jack's Large Party Contracts amount of 25% Charge – 34 th Street			
122	Evidence Summary: Uncle Jack's Large Party Contracts amount of 25% Charge - Midtown			
123	Evidence Summary: Uncle Jack's Large Party Contracts amount of 25% Charge - Bayside			
124	Evidence Summary: Number of Employees per week – 34 th Street			
125	Evidence Summary: Number of Employees per week - Bayside			
126	Evidence Summary: Number of Employees per week - Midtown			

127	Uncle Jack's 34 th Street Large Party Contracts	UJ5386- 5459		
128	Evidence Summary: Shifts Worked According To Uncle Jack's Tip Logs			
129	Evidence Summary: Weeks FLSA Plaintiffs Were Employed within the Statute of Limitations Period			
130	Demonstrative Exhibit: Total Hours of FLSA Plaintiffs by Year		FRE – 1006 Not for admission	Admissible under FRE 1006; voluminous documents; objection raised for first time on 7/2/12
131	Demonstrative Exhibit: Plaintiffs' Damages from Unpaid Overtime		FRE – 1006 Not for admission	Admissible under FRE 1006; voluminous documents; objection raised for first time on 7/2/12
132	Demonstrative Exhibit: Plaintiffs' Damages From Uncle Jack's Taking of 3% of Plaintiffs' Credit Card Tips		FRE – 1006 Not for admission	Admissible under FRE 1006; voluminous documents; objection raised for first time on 7/2/12
133	Demonstrative Exhibit: Plaintiffs' Damages From Uncle Jack's Taking of Plaintiffs' Large Party Tips		FRE – 1006 Not for admission	Admissible under FRE 1006; voluminous documents; objection raised for first time on 7/2/12
134	Demonstrative Exhibit: Plaintiffs' Damages From Uncle Jack's Unlawful Taking of Tip Credits		FRE – 1006 Not for admission	Admissible under FRE 1006; voluminous

				documents; objection raised for first time on 7/2/12
135	Demonstrative Exhibit: Plaintiffs' Damages from Uncle Jack's Failure to Pay Spread of Hours Pay		FRE – 1006 Not for admission	Admissible under FRE 1006; voluminous documents; objection raised for first time on 7/2/12
136	Demonstrative Exhibit: Plaintiffs' Damages From Uncle Jack's Failure To Pay Uniform Allowances		FRE – 1006 Not for admission	Admissible under FRE 1006; voluminous documents; objection raised for first time on 7/2/12
137	Demonstrative Exhibit: Average Number of Tipped Employees Working Each Day at Each Restaurant		FRE – 1006 Not for admission	Admissible under FRE 1006; voluminous documents; objection raised for first time on 7/2/12
138	Demonstrative Exhibit: Calculation of Plaintiffs' Regular Rate With Service Fee If Jury Finds Large Party Surcharge Was Not a Gratuity		FRE – 1006 Not for admission	Admissible under FRE 1006; voluminous documents
139	Demonstrative Exhibit: Plaintiffs' Damages From Unpaid Overtime If Jury Finds Large Party Surcharge Was Not a Gratuity		FRE – 1006 Not for admission	Admissible under FRE 1006; voluminous documents

B. Defendants' Exhibit List

L	Description	Bates Nos. (if applicable)	Objection	Defendant's Response to Obj.
A	1/19/2009 Letter from accountants	07270UJ	Document is unsworn hearsay (Rule 602, 801- 803) purportedly stating the amount of credit card fees Uncle Jack's 34 th St. incurred and inadmissible any purpose other than the truth of the matter asserted. It would be unfairly prejudicial to admit it for any "other purpose."	Offered under FRE – 1006 as a summary.
B	HSBC Deposit Records-2005- 4 th quarter, 2006- 1 st ,2 nd ,3 rd ,4 th quarters,2007- 1 st and 2 nd quarters	6721- 6822		
C	Amex- Transaction detail information(20 09)	5522-5577UJ		
D	Investigative file on Ira Mandel	8559-8580		
E	Clock-in Report (2007)	5950,5954,5956- 5957,5960,5968,5981- 5983,5991-5995,5999- 6000,6010- 6011,6013,6016,6018- 6022,6028-6030,6059-		

		6060,6069,6087,6096-6098,6120-6121,6124,6130,6133-6135,6141-6142,6156		
F	Credit Card Records	7862-7982,7985-8279	Not produced until 17 months after discovery ended. Inadmissible under Rule 6(a)(i)(A)(ii); Rule 37	Produced under continuing obligation. Rule 26(a)(1)
G	Payroll Journal (2004&2005)	8280-8558	Not produced until 17 months after discovery ended. Inadmissible under Rule 26(a)(i)(A)(ii); Rule 37	Produced under continuing obligation. Rule 26(a)(1)
H	6-14-02 letter certifying Arias' employment with Royal Caribbean International and Celebrity Cruises	N/A		
I	Arias' (2003) w-4 Form, Identification, Employment Eligibility Verification Form	N/A	Unfair prejudice of inquiry into immigrations status substantially outweighs its probative value Rules 401-403.	Issue of multiple social security numbers. Directly to credibility – Rule 404
J	Arias' (2008) w-4 Form	N/A		
K	Arias' (2008) Tax form 1040	P1001-1006		
L	Check Stubs Jan 2008 to June 2008	P0937-P0954,P0956,P0958,P0960,P0963-P0964,P0966,P0968		
M	Arias' Time Card- 6/11/06&6/18/06	P0858,P0860		
N	Plaintiff Abelardo	N/A		

	Arias' Answers to Defendants' Interrogatories			
O	Jeffrey M. Greenberg's Paystubs & Receipts	P0677-P0708, P0710-P0712		
P	Plaintiff Vic Rivera's Response to Defendants' Request for Production of Documents	N/A		
Q	Plaintiff Vic Rivera's Answers to Defendants' Interrogatories	N/A		
R	Robert Marrano's Resume	P0865		
S	Weekly Clock-in Report(NYC)	6013UJ-6014UJ,6070UJ 6072UJ,6115UJ,6126UJ,6145 UJ,6154UJ-6156UJ,6173UJ		
T	Ticket Report	P0866-P0868		
U	Plaintiff Robert Marrano's Answers to Defendants' Interrogatories	N/A		
V	34 th Street Employee Gross to Net	1541UJ- 1542UJ,1545UJ,1552UJ,1554 UJ		

Depositions to be Offered Into Evidence

By Plaintiffs: William J. Degel; Thomas Carpenter; Uncle Jack's Steakhouse Midtown.

By Defendants: Abelardo Arias, William Corcoran, Jeffrey Greenberg, Robert Marrano,
Victor Rivera, Michael Overton

11. Experts to be called at trial and brief summary of the testimony of each expert.

None.

12. Trial Counsel.

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New York, New York 10036
(212) 735-3060 (tel.)

*Trial Counsel for Defendant
Dennis Borysowski*

13. Estimate of Trial Time.

Four to five weeks.

14. Submit a set of all exhibits to which objections have been raised.

Please see index and copies of exhibits filed at the same time as this Joint Pretrial Statement.

Respectfully submitted,

<p>FUGAZY & ROONEY LLP</p> <p>By: <u> /S/ </u> Paul P. Rooney, Esq. Amanda M. Fugazy, Esq. Sheryl L. Maltz, Esq. 437 Madison Avenue, 35th Floor New York, New York 10022 (212) 346-0570 (tel.) (484) 805-7022 (fax)</p> <p><i>Trial Counsel for Plaintiffs and Class Members</i></p> <p>Dated: July 3, 2012</p>	<p>VALLI, KANE & VAGNINI LLP</p> <p>By: <u> /S/ </u> Robert J. Valli, Jr. Esq. Sara Wyn Kane, Esq. 600 Old Country Road, Suite 519 Garden City, New York 11530 (516) 203-7180 (tel.) (516) 706-0248 (fax)</p> <p><i>Trial Counsel for Defendants Uncle Jack's Steakhouse, Inc., Uncle Jack's of Bayside, Inc., Uncle Jack's Steakhouse Midtown, Inc., William J. Degel and Thomas Carpenter</i></p> <p>Dated: July 3, 2012</p> <p>SKADDEN ARPS SLATE MEAGHER & FLOM LLP</p> <p>By: <u> /S/ </u> Edward K. Filardi, Esq. Skadden Arps Slate Meagher & Flom, LLP Four Times Square New York, New York 10036 (212) 735-3060 (tel.)</p> <p><i>Trial Counsel for Defendant Dennis Borysowski</i></p> <p>Dated: July 3, 2012</p>
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